

REMARKS

Status of Claims

Claims 1, 5-14, and 21-29 are pending in the application.

Claims 1, 5-14, and 21-29 stand rejected.

Claims 1 and 14 are amended herein. No new matter is introduced.

Claim Rejections

The Examiner contends that claims 1, 5-10, 13, 14, 21-26, and 29 are unpatentable under 35 U.S.C. §103 over U.S. Patent No. 6,511,672 ("Tan"), and claims 11-12 and 27-28 are unpatentable under 35 U.S.C. § 103 over Tan in view of Brieva.

Tan discloses a "first platelet of alumina treated with metal oxide" and a "second platelet treated with a spherical light scattering component" which may include bismuth oxychloride. According to Tan, the first and second platelets are "blended" together to "resemble the natural tone of the skin." The Examiner contends that the instant claim limitation of a "pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade" reads on Tan's "blend" of the first and second platelets because the "alumina platelet will be in close contact with bismuth oxychloride" and that the term bonded "broadly encompasses physical or chemical bonding." Applicant traverse this rejection for at least the reason that there is no reasonable construction of the term "bonded" which would embrace the simple physical admixture of Tan's first and second platelets.

The term "bonded" does not embrace physical blends

The Examiner's proffered construction is at odds with the plain meaning of the term "bonded." For example, The American Heritage Dictionary, Fourth Edition (2001) provides the following relevant definitions of the term "bond": "n. 1. Something that binds, ties, or fastens things together. . . 7. A chemical bond" and "v. 4. To join securely, as with glue." Tan's blends clearly do not have a "bond" between the first and second platelets under the plain meaning of the term, as evidenced by these dictionary definitions, because there is nothing to bind the platelets to one another. For example, a mixture of salt and pepper puts each in "close

proximity” to the other, but clearly would not be viewed by one skilled in the art as having the salt and pepper particles bonded to one another because each particle is readily separated from the others. Applicants see no reasons why the skilled artisan would view Tan’s platelet blends any differently.

Moreover, the Examiner’s construction of the term “bond” as embracing a physical blend is also at odds with Applicants’ specification because the application clearly distinguishes between a physical blend and the bonded pearlescent component. For example, the application discloses “forming a shade-matched blend having the shade-matched pigment component and the shade-matched pearlescent component” (p. 10, lines 11-13). Similarly, the application discloses that the “shade-matched pearlescent component and shade-matched pigment component are then blended to form a shade-matched blend” (p. 16, lines 12-14). Thus, it is clear that the shade-matched pearlescent component and the shade-matched pigment are combined as simple physical admixtures, consistent with Tan’s use of the term blend. In contrast to such a blend, the application discloses that the “pearlescent ingredient preferably is a combination of colored pigment bonded to bismuth oxychloride and mica using calcium stearate” (page 8, lines 8-10). Thus, one skilled in the art would understand from reading Applicants’ disclosure that the pearlescent ingredient is not a blend of a colored pigment and bismuth oxychloride containing ingredient because Applicants have used the terms “blended” and “bonded” distinctly in the specification.

To the extent that the Examiner is taking Official Notice under MPEP § 2144.03, or relying on a scientific theory under MPEP § 2144.02, to support the contention that “the term ‘bonded’ broadly encompasses physical or chemical bonding of bismuth oxychloride to colorant, given the plain meaning of the term ‘bonded,’” Applicants traverse this finding and kindly ask that the Examiner provide documentary evidence to support such a conclusion, as required by those sections. Traversal is on the grounds that one skilled in the art would not understand the term “bonded to” to include physical admixtures for all of the reasons discussed herein.

Because the plain meaning of the term “bonded” does not embrace physical blends and because Applicants’ specification makes clear that the pearlescent component is not a physical blend, withdrawal of the rejection is warranted. As discussed below, under an appropriate construction of the instant claims, Tan does not teach or suggest “a pearlescent

component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade” and “a pigment component that also matches in shade said benchmark shade” as required by the instant claims.

Tan describes a composition comprising a combination of two different platelets: a “**first platelet** of alumina treated with metal oxide” and a “**second platelet** treated with a spherical light scattering component” [col. 3, lines 31-34]; and states that the composition may further comprise an “**interference pigment**” [col. 4, lines 41-42]. There is no fair reading of Tan under which the first platelet, the second platelet, and the interference pigment can be seen to remotely suggest the presently claimed subject matter, as discussed below.

Tan’s “first platelet”

Tan’s “first platelet” is an “alumina-based pigment” of “alumina treated with metal oxide” [col. 3, lines 31-32 and 41-43]. Tan explicitly states that the first platelet “**does not match skin tone.**” [col. 3, lines 40-45]. Accordingly, Tan’s first platelet does not constitute “a pigment component that also matches in shade said benchmark shade” as required by the present claims.

Tan states that it is the **combination** of the first and second platelets that is said to “resemble the natural tone of the skin” [col. 3, lines 60-61]. However, the combination of the first platelet and second platelet is not “a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade” because the platelets are not “bonded” to one another. Rather, it is clear from Tan that the first and second platelets are merely “blended” together [col. 3, lines 6-10; col. 6, lines 50-52; col. 8, lines 545-8]. For at least the reasons discussed above, there is no reasonable construction of the term “bonded” which would embrace a simple physical admixture of two components.

Applicants submit that the first platelet of Tan is wholly irrelevant to the present claims because it is neither “a pigment component that also matches in shade said benchmark shade” nor is it “a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade,” for at least the reasons discussed above. If

anything. Tan **teaches away** from the instant claims because the first platelet is said not to match skin tone, nor is it bonded to a pearlescent component. Therefore Examiner's statement that "the first platelet alumina is matched in shade with a natural skin tone" is obviously incorrect, insofar as Tan says that it **"does not match skin tone"** [col. 3, line 44].

Tan's "second platelet"

The "second platelet" of Tan is said to be "for example, mica, bismuth oxychloride, sericite, alumina, aluminum, copper, bronze, silver or silica" [col. 4, lines 20-22] which can be "treated with a spherical light scattering component" [col. 3, lines 31-34]. While the "second platelet" may be, among other things, bismuth oxychloride, it does not comprise "a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade." First, the second platelet is coated with a "spherical light scattering component" (not a colorant). Second, nowhere in Tan is it said that the second platelet "matches in shade a natural skin tone benchmark shade." In fact, one skilled in the art would clearly understand that the **second platelet does not match skin tone** because Tan repeatedly states that it is only the combination ("blend") of the first and second platelets that is said to "resemble the natural tone of the skin" [col. 3, lines 60-61]. For example, Tan states that "Together, the two different platelets form the mosaic which gently reflects light and matches the natural color of the skin" [col. 3, lines 34-36]. Similarly, Tan states that while "[e]ach individual platelet is known . . . they each by themselves have drawbacks when used in traditional makeup formulations intended for daily use because they are not suitable" [col. 3, lines 34-38] and notably, with respect to the second platelet, it is said that they are "shimmery or metallic looking, and therefore, are not typically selected for use in a natural looking makeup of foundation" [col. 3, lines 47-50]. Applicants fail to find any teaching in Tan that the second platelet is matched to skin tone. Because the second platelet is not matched to skin tone, nor bonded to a colorant, Applicants submit that it too has no relevance to the instant claims.

Tan's "interference pigments"

Applicants understand that the Examiner has cited the interference pigments of Tan as meeting the limitation of "a pigment component that also matches in shade said benchmark shade." Tan states that in "one embodiment, the composition also comprises a

standard interference pigment” [col. 4, lines 40-41] and that “interference pigments of different colors or types are combined in the present invention to blend an appropriate shade or intensity of color to match the natural skin tone” [col. 4, line 66-col. 5, line 2]. While the “pigment component” of the present invention embraces combinations of pigments which together match skin tone, the interference pigments of Tan are not the type of pigments called for by the claim. Applicants direct the Examiner’s attention to the paragraph beginning on page 14, line 19 of Applicants’ specification wherein it is stated that “[f]other pearls are white nacreous materials, such as mica covered with titanium oxide or covered with bismuth oxychloride; and colored nacreous materials, such as titanium mica with iron oxides, titanium mica with ferric blue or chromium oxide, titanium mica with an organic pigment or the aforementioned type.” These white and colored nacreous materials “are preferably not used in the present invention.” (p. 15, lines 2-3). These nacreous materials appear to be the same pigments which Tan refers to as interference pigments. Accordingly, Applicants submit that the interference pigments of Tan would not be understood to correspond to the “pigment component” of the present claims. To make this distinction explicit, independent claims 1 and 14 are amended herein to specify that the “pigment component does not comprise a nacreous material.”

Thus, the interference pigments of Tan are neither “a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade” nor are they “a pigment component that also matches in shade said benchmark shade” as required by the instant claims because the interference pigments of Tan would be understood to be a “nacreous material.”

In sum, Tan does not teach or suggest “a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade,” nor does it disclose “a pigment component that also matches in shade said benchmark shade.”

In view of the foregoing, Applicants submit that independent claims 1 and 14 fully distinguish over Tan and respectfully request reconsideration of all rejections. The rejection of claims 11-12 and 27-28 under 35 U.S.C. § 103 as obvious over Tan in view of

Brieva are similarly deficient for at least the same reasons. However, Applicants reserve the right to address the particulars of this rejection, if necessary, in the future.

CONCLUSION

Applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendments and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted.

Dated: October 2, 2007

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